

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION  
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IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C. DBA  
JOHNSON UTILITIES COMPANY, FOR AN  
INCREASE IN ITS WATER AND WASTE-  
WATER RATES FOR CUSTOMERS WITHIN  
PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

COMMENTS OF JOHNSON UTILITIES  
ON STAFF REPORT AND PROPOSED  
ORDER

On November 29, 2013, the Arizona Corporation Commission's Utilities Division Staff ("Staff") docketed a memorandum ("Staff Report") and proposed order ("Proposed Order") addressing the October 17, 2013 filing by Johnson Utilities, LLC ("Johnson Utilities" or the "Company") of its proposed Central Arizona Groundwater Replenishment District ("CAGR") adjustor fees applicable for all water sold on and after December 1, 2013. In the Staff Report and Proposed Order, Staff recommends approval of the Company's proposed CAGR adjustor fees for the Phoenix and Pinal Active Management Areas ("AMAs"). However, Staff also reports erroneously that the Company is not properly segregating CAGR adjustor fees received from customers in compliance with Decision 71854. As discussed below, Johnson Utilities is fully compliant with the requirements of Decision 71854 and the Company requests that the Arizona Corporation Commission ("Commission") adopt the requested amendment to the Proposed Order attached hereto as Attachment 1.

The Commission approved a CAGR adjustor mechanism for Johnson Utilities in this docket in Decision 71854. In approving the adjustor, the Commission explained as follows:

The CAGR assessment fee is not discretionary for companies such as Johnson Utilities, and the Commission believes that CAGR participation represents the kind of investment that is appropriate for timely cost recovery. To not allow the Company to recover its CAGR costs in real time may threaten the Company's

1 ability to participate in the CAGR program and would send a negative signal to  
2 water providers regarding this Commission's support for sound regional  
3 approaches to achieving safe yield in Active Management Areas.<sup>1</sup>

4 The Commission attached eight conditions to the CAGR adjustor, including the  
5 following Conditions 2 and 3:

6 2. The Company shall, on a monthly basis, place all CAGR monies  
7 collected from customers in a separate, interest bearing account ("CAGR  
8 Account").

9 3. The only time the Company can withdraw money from the CAGR  
10 Account is to pay the annual CAGR fee to the CAGR, which is due on  
11 October 15<sup>th</sup> of each year.

12 Staff asserts in its Staff Report that Johnson Utilities has not complied with these two  
13 conditions because "monthly CAGR collections were often not deposited to the segregated  
14 account" and "[c]ollections were held by the Company to offset the prior year's under-  
15 collection, and they were only segregated after the under-collection was satisfied."<sup>2</sup> However,  
16 Staff fails to recognize that its interpretation of conditions 2 and 3 of Decision 71854 would  
17 subject Johnson Utilities to funding CAGR under-collections year after year with no  
18 opportunity to recover the costs of taxes that the Company has paid. This would be contrary to  
19 the Commission's stated view that "CAGR participation represents the kind of investment that  
20 is appropriate for timely cost recovery."<sup>3</sup>

21 Since Decision 71854 was issued in 2010, the CAGR assessments on Johnson Utilities  
22 have increased each year, and the Company anticipates that assessments will continue to rise.  
23 By way of illustration, the Company's 2011 CAGR assessment for the Phoenix AMA was  
24 \$3,070,866.12 and the 2012 assessment was \$3,785,764.72, an increase of more than 23% in one  
25 year.<sup>4</sup> The Staff Report shows that the Company's authorized CAGR assessments resulted in a  
26 2010 under-collection of the CAGR invoice by \$410,812.48 and a 2011 under-collection of the

27 <sup>1</sup> Decision 71854 at 44, lines 2-8.

28 <sup>2</sup> Staff Report dated November 29, 2013, at 4.

<sup>3</sup> Decision 71854 at 44, lines 3-4 (emphasis added).

<sup>4</sup> The Company's CAGR assessments for the Pinal AMA have seen even larger increases, even though  
the Company's CAGR assessments for the Pinal AMA represent a much smaller number than the  
assessments for the Phoenix AMA.

1 CAGRD invoice by \$223,312.66. While Johnson Utilities recognizes that the Company must  
2 initially fund the under-collection out of its general account, it was certainly never the  
3 Commission's intent that the Company absorb the under-collected amounts without recovery.

4 When CAGRD assessments are increasing, Johnson Utilities will not have sufficient  
5 funds in its segregated, interest-bearing CAGRD account to pay the entire annual CAGRD  
6 invoice when it comes due. Thus, the Company must fund the shortfall out of its general  
7 account, thereby creating a CAGRD deficit in the general account. As the Company receives  
8 customer payments each month, those payments are deposited into the general account.<sup>5</sup> The  
9 CAGRD fees received from customers are then moved over to the CAGRD segregated account  
10 once the CAGRD deficit in the general account has been cleared. If Johnson Utilities were not  
11 permitted to clear the deficit in its general account created by the under-collection of CAGRD  
12 fees, then the Company would be forced to perpetually absorb the under-collected amounts  
13 without recovery from customers.

14 Staff asserts in the Staff Report that "[a]ny undercollections shall be included in the true-  
15 up."<sup>6</sup> However, this does address the issue. The inclusion of the under-collection of CAGRD  
16 fees in the annual true-up will not allow recovery by Johnson Utilities for CAGRD assessments  
17 paid out of the general account because Decision 71854 prohibits the Company from  
18 withdrawing funds from the segregated CAGRD account except to pay the CAGRD. The  
19 Company must be allowed to clear the deficit in its general account before CAGRD fees are  
20 transferred to the segregated CAGRD account. Otherwise, the Company will never recover the  
21 portion of the CAGRD assessment that it funds out of the general account.

22 Consistent with Decision 71854, Johnson Utilities places CAGRD monies collected from  
23 customers in a separate, interest-bearing account. Consistent with Decision 71854, Johnson  
24 Utilities only withdraws monies from the CAGRD account to pay the annual CAGRD fee to the

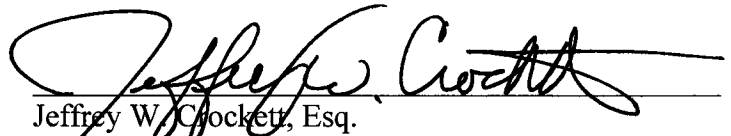
25 \_\_\_\_\_  
26 <sup>5</sup> Because Johnson Utilities receives a single payment from its customers each month which combines the  
27 CAGRD fees and all other charges and fees, the Company cannot deposit the CAGRD fees directly into  
28 the segregated CAGRD account. The payment goes into the Company's general account and then  
CAGRD fees are moved into the segregated CAGRD account after any CAGRD deficit in the general  
account has been cleared.

<sup>6</sup> Staff Report dated November 29, 2013, at 4.

1 CAGRD. Thus, contrary to the assertion in the Staff Report, the Company's current practice of  
2 handling CAGRD fees is fully consistent with Decision 71854 and Staff's recommendations  
3 regarding CAGRD accounting as set forth on page four of the Staff Report should be rejected.  
4 Likewise, there is no need for paragraphs 12, 1 and 2 on page 5 or the ordering paragraph at  
5 lines 24-27 of page 6 of the Proposed Order. Accordingly, Johnson Utilities requests that the  
6 Commission modify the Proposed Order as set forth in the Company's Proposed Amendment #1  
7 attached hereto as Attachment 1.

8 RESPECTFULLY submitted this 9<sup>th</sup> day of December, 2013.

9 BROWNSTEIN HYATT FARBER SCHRECK LLP

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14 Attorneys for Johnson Utilities, L.L.C.

15 ORIGINAL and thirteen (13) copies filed  
16 this 9<sup>th</sup> day of December, 2013, with:

17 Docket Control  
18 ARIZONA CORPORATION COMMISSION  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 COPY of the foregoing hand-delivered  
22 this 9<sup>th</sup> day of December, 2013, to:

23 Lyn Farmer, Chief Administrative Law Judge  
24 Hearing Division  
25 ARIZONA CORPORATION COMMISSION  
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27 Phoenix, Arizona 85007

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1 Steve Olea, Director  
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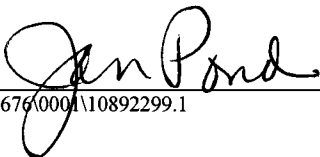
6 Copy of the foregoing mailed and e-mailed  
7 this 9<sup>th</sup> day of December, 2013, to:

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# **ATTACHMENT 1**

**COMPANY PROPOSED AMENDMENT # 1**

DATE PREPARED: December 9, 2013

COMPANY: Johnson Utilities, L.L.C.

DOCKET NO.: WS-02987A-08-0180

OPEN MEETING DATES: December 17-18, 2013

AGENDA ITEM: U-\_\_\_\_\_

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Page 5, lines 16-20,

DELETE the section entitled "Segregation of CAGRD Monies Collected" at lines 16-20.

Page 5, lines 22-28,

DELETE Conclusions and Recommendations Nos. 1 and 2 at lines 22-28.

Page 6, lines 24-27,

DELETE the ordering paragraph at lines 24-27.

Make all other conforming changes.